



## GREENWOOD COMMON COUNCIL FEBRUARY 21, 2005 MINUTES

Council President Bruce Armstrong called the meeting to order at 7:00 p.m.

The audience recited the Pledge of Allegiance in unison, after which the Rev. Tom Bridges of the First Baptist Church led in prayer.

<b>PRESENT:</b>	Council members Bruce Armstrong, Ron Bates, Bill Bless, Ron Deer, John Gibson, Keith Hardin, Jessie Reed; Clerk-Treasurer Jeannine Myers and City Attorney Shawna Koons-Davis. Mayor Charles Henderson was not present.
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Mr. Bates moved to approve the minutes of the regular session on February 7<sup>th</sup>, with second by Mr. Hardin. Vote: Ayes. Motion carried.

The City Attorney had distributed her litigation report. Mr. Bates asked about the Kupstas case and whether it was likely the Supreme Court would review the decision. Ms. Koons-Davis replied that the issues in the Kupstas case involved disability discrimination law that was well-settled and there was no novel issue that the Supreme Court would need to decide upon. Therefore, it is unlikely that the Supreme Court would review the decision.

For the Plan Commission, Mr. Bates reported one item of new business – an application for a business at Smith Valley Road and State Road 135.

Mr. Deer will have copies of recommendations compiled by the tax abatement committee at the March 7<sup>th</sup> Council meeting.

Mr. Gibson told the Council that the Solid Waste Management Board meets the second week of the month and are in the process of getting bids for recycling. He added that recycled materials are available to school teachers.

**ORDINANCE No. 04-58** – An Ordinance Annexing Certain Territory Within the Area of Extended Jurisdiction of the City of Greenwood, Indiana, Placing the Same Within the Corporate Boundaries Thereof and Making the Same a Part of the City of Greenwood and Redefining the Corporate Boundaries of the City of Greenwood, Indiana, Approximately 85.4 Acres Located Approximately ¼ Mile East of Honey Creek Road on the North Side of Cutsinger Road and East of Alden Place Subdivision (commonly known as the Bright Property). Mr. Bless moved to pass Ordinance No. 04-58 through first reading. Second by Mr. Gibson. Mr. Armstrong opened the public hearing for comments or questions. Ken Zumstein of J. Greg Allen & Associates represented the petitioner and referred to a rendering to show the location of the property. Mr. Zumstein went on to point out the zoning of the different areas. This was approved by the Plan Commission by a 10 – 0 vote. Vote: Ayes. **PASSED FIRST READING.** In order to comply with State statute, Mr. Bates moved to postpone second reading until the March 21<sup>st</sup> meeting. Second by Mr. Hardin. Vote: Ayes. **SECOND READING POSTPONED UNTIL MARCH 21, 2005 MEETING.**

**ORDINANCE No. 04-60** – An Ordinance Annexing Certain Territory Contiguous to the City of Greenwood, Indiana, Placing the Same Within the Corporate Boundaries Thereof and Making the Same a Part of the City of Greenwood and Redefining the Corporate Boundaries of the City of Greenwood, Indiana, Approximately 9.328 Acres Located on the South Side of Smith Valley Road and West of the Existing Home Depot Store, and Commonly Known as the Jerry Taylor and Shepherd's Grove Development, Inc. Property. Ms. Koons-Davis reported that the petition has been withdrawn. **WITHDRAWN.**

**ORDINANCE No. 05-04** – An Ordinance Providing For an Additional Appropriation From the Cumulative Capital Improvement Fund – Cigarette Tax to the Board of Public Works and Safety (\$163,000) For Construction Costs of the Meridian Street Rehabilitation Project. Mr. Gibson moved to pass Ordinance No. 05-04 on first reading. Second by Mr. Bates. Mr. Armstrong opened the public hearing for audience questions. As no one spoke, the public hearing was closed.

Mr. Hardin asked if there were an itemized list of overages on the project. They were discussed at the last meeting, he said, but would like them in writing. Mr. Deer recalled that there had to be additional digging under the railroad tracks which changed some of the elevations. Mr. Hardin would like to see what each payment was for. Ms. Koons-Davis will pass that request on to the Director of Engineering and the Director of Operations and will ask that it be e-mailed. Vote: Ayes. **ORDINANCE No. 05-04 PASSED FIRST READING.**

**ORDINANCE No. 05-03** – An Ordinance Amending the Greenwood Municipal Code (1993), As Amended, Article 5, Section 8-45 to Alter Speed Zones (Reserve at Timbers Edge Subdivision). Mr. Hardin moved to pass Ordinance No. 05-03 through first reading. Second by Mr. Bates, who expressed his appreciation for all involved in bringing about this ordinance. Vote: Ayes. **PASSED FIRST READING.**

**ORDINANCE No. 05-01** – An Ordinance to Amend the Official Zoning Map Adopted by Reference in Zoning Ordinance No. 82-1 Entitled “An Ordinance Establishing Comprehensive Zoning Regulations For the City of Greenwood, Indiana, and Providing For the Administration, Enforcement, and Amendment Thereof, In Accordance With the Provisions of I.C. 36-7-4-600 et seq. Laws of Indiana, As Amended, and For the Repeal of All Ordinances in Conflict Herewith” (Proposed Rezoning of approximately 6.59 acres of land located on the southeast corner of 750 North and 125 West, commonly known as Church of the Nazarene Property). Mr. Hardin moved to pass Ordinance No. 05-01 through second reading. Second by Mr. Bates. Mr. Bates recounted that the Plan Commission gave this a 6 – 1 favorable recommendation. Vote: Ayes. **PASSED SECOND READING.**

**ORDINANCE No. 05-02** – An Ordinance Providing For an Additional Appropriation From the Cumulative Capital Improvement Fund – Tax Levy (\$1,000,000) to the Board of Public Works and Safety For Reconstruction and Repair of a Portion of Streets Located in the Northern Park Subdivision. Mr. Hardin moved to pass Ordinance No. 05-02 on second reading. Second by Ms. Reed. Mr. Gibson recalled that this work is basically for the east side of Northern Park. Vote: Ayes. **PASSED SECOND READING.**

**ORDINANCE No. 05-05** – An Ordinance Providing For an Additional Appropriation From the Cumulative Capital Improvement Fund – Cigarette Tax to the Board of Public Works and Safety (\$40,000) For Relocation of Traffic Signal Facilities on the Southeast Corner of Main Street and Emerson Avenue. The City Attorney mentioned that this work will allow for the right-turn lane. **INTRODUCED.**

**ORDINANCE No. 05-06** – An Ordinance Providing For an Additional Appropriation From the General Fund to the Human Resources Department (\$3,750) For a Temporary Employee. Human Resources Director Carolyn Gaier explained that this ordinance came about because of a medical situation that arose with her HR Coordinator. It would allow her to hire a temporary employee for approximately \$10 an hour. There is a possibility her HR Coordinator would be on disability leave for 90 days, said Ms. Gaier, which is 480 hours. In response to Mr. Bates, she then briefly described the approval of a new insurance provider at the last Board of Works meeting. **INTRODUCED.**

**RESOLUTION No. 05-02** – A Resolution Declaring a Certain Area Within the City of Greenwood an Economic Revitalization Area and Qualifying Certain Real Property Improvements For Property Tax Abatement and Setting the Time and Place for a Public Hearing Thereon (Greenwood Springs Mediplex, LLC – Lot 6, Block 4, Greenwood Springs Commercial Subdivision). Consultant Pat Sherman referred to the SB1 and described the building. This is the first lot off of Emerson Avenue. **RESOLUTION No. 05-02 INTRODUCED.**

Under miscellaneous business, Mr. Armstrong recounted the issue discussed at the last meeting about whether the hiring of Police Chief Joe Pitcher from outside the department complied with State statute. Mr. Armstrong reported meeting with attorney Linda Meier of the Police Merit Commission preliminarily to see if she would represent the Council. After polling the Council, he found 6 members in favor, and told the Council that the Police Merit Commission indicated to him that they did not feel there would be a conflict of interest. In response to Mr. Hardin, the City Attorney stated that official action would need to be taken in open meeting. Ms. Reed moved to hire Linda Meier as Council attorney in this matter. Second by Mr. Hardin. Mr. Deer asked about the rate. Ms. Meier's normal rate is \$80 an hour for the City of

Greenwood. Mr. Armstrong cited I.C. 36-4-6-24 which states that an outside attorney cannot be paid more than the City Attorney and wondered if Ms. Meier's normal rate could be used. The City Attorney replied that she is paid \$66,809 per year for 2080 hours, so to compare apples to apples it should be reduced to an hourly rate. Mr. Armstrong suggested a ceiling of \$80 an hour. Ms. Reed amended her motion to include the pay of \$80 an hour. Mr. Hardin amended the second. Ms. Koons-Davis asked what the Council was hiring Ms. Meier to do. Mr. Deer then called for a discussion that he said could answer how long this might take. He had contacted the State Attorney General's office and asked specifically what takes place in a request like this. The deputy told Mr. Deer that one option was no response – they are not obligated by statute to act. They could give a public opinion or submit a private opinion (an opinion of the law). The Attorney General is not obligated to consider anything but the original request. Therefore, Mr. Deer wondered if the Council was being premature in asking for money to be spent to analyze an opinion that has not yet been made.

In response to Mr. Hardin, the City Attorney said the opinion of the Attorney General would be advisory – not a binding legal decision of the court. To get that, the Council would have to file a Declaratory Judgment Action, which decides who has the power if there is a power issue. She reiterated that a binding legal decision would come from the court. Mr. Deer objected to hiring anyone until the Attorney General has issued a decision and Mr. Armstrong objected to providing a one-sided position to the Attorney General. He told Ms. Koons-Davis that his original request was to hire Ms. Meier to give a friend of the Council brief to the Attorney General so the issue would be balanced on both sides. Mr. Deer then reminded the Council that the Attorney General's office is not obligated to accept another position and we would be spending money on something they don't have to review and stood by his stand that hiring an attorney is premature. Mr. Hardin asserted that not only could this issue affect previous ordinances but also the way this government operates in the future. There was more discussion on presenting two opinions on the issue. Ms. Reed called for the question. Vote: Ayes – Reed, Armstrong, Bates, Bless, Gibson, Hardin; Nay – Deer. Roll call on the motion: Ayes – Armstrong, Bates, Bless, Gibson, Hardin, Reed; Nay – Deer.

Mr. Armstrong then stated that his opinion was that the Council hired Ms. Meier to provide a well-framed counter argument to the information provided. Ms. Meier then came forward and suggested that Council members extend the olive branch to each other and try to start working together on this issue. She agreed that the Attorney General's opinion is not binding. She advised that to obtain a judicial determination, a court of competent jurisdiction is the most appropriate way to go. At this point Ms. Meier suggested that she and the City Attorney work together on this issue. She told the Council that she would be happy to share her research with the Council, saying that she believes if we can all work together using the same information it will resolve the question. She indicated that she had no doubt that the City ordinance prevails; that was the intent. The only example of an area being pre-empted by State law is that 1/3 of the Police Merit Commission appointees must come from the Police Department. Our ordinance could be declared unconstitutional; otherwise our ordinance is presumed valid until a court of competent jurisdiction declares it invalid. Ms. Koons-Davis told the Council she may have a conflict, as she is counsel for the Mayor and the Council; she will have to work that out. She and Ms. Meier will meet. At this point, Mr. Armstrong read into the record a letter from State Senator Brent Waltz and a reply from the State Attorney General's office (in attachments of this meeting).

Mr. Bates at this time brought up the issue of a method of uniform payment for members of boards and commissions. In many cases members are paid whether or not they attend a meeting. Absenteeism and accountability are the issues that concern him. Ms. Koons-Davis asked for direction on looking into the issue. Members of the Redevelopment Commission are paid for meetings attended. Other board and commission members are paid quarterly whether they attend or not. After discussion, Mr. Bates moved to direct the City Attorney to research the matter and come back with information and suggestions. Second by Mr. Hardin. Vote: Ayes. Motion carried.

Mr. Bates next discussed a letter from the President of the Evansville Common Council on the subject of underage drinking as well as a copy of their resolution opposing the expansion of alcohol outlets (in attachments of this meeting). Mr. Armstrong questioned whether it is in the jurisdiction of our Council. Mr. Bates asked that the Council go on record to support whatever can be done in the State legislature, as the letter asked.

Mr. Gibson next read a letter from State Representative Burton regarding the curbs on Fry Road and replies from concerned citizens of Greenwood. Mr. Burton will attempt to be at a March Council meeting.

Ms. Reed asked about when a list of streets needing repair was to be turned in to staff. Director of Operations Norm Gabehart replied that whenever the list can be compiled. Howard Road was Ms. Reed's concern, as there was no safe place to walk. On the North Meridian Street project addressed by Ordinance No. 05-04 passed on first reading tonight, Mr. Gabehart explained the \$163,000 was needed to finish the project, as undercutting was needed in two different sections. Mr. Gabehart believes change orders on the project totaled approximately \$200,000 for Hunt Paving. He discussed projects now being studied which involve major reconstruction, including Whispering Trails. Mr. Hardin then mentioned Monticello as being in need of repair. Main Street from U.S. Highway 31 east, said Mr. Gabehart, is considered an absolute priority for the paving list because of the traffic pattern. Yorktown Road from Main Street to Smith Valley was mentioned next, as a major cut through, and Georgetown as well.

The Clerk-Treasurer reported that the City has a bond rating of A+. Mr. Bates commended the Clerk-Treasurer on her investing. The Super Money Fund Account earned \$51,470.60. Ms. Myers next indicated that the annual report would be in Wednesday's *Challenger*. She will be attending a Clerk-Treasurer's conference at Ball State the week of March 7<sup>th</sup> and will not be at the next Council meeting.

Ms. Koons-Davis brought up the contract for the Senior Citizens Center and asked if the Council was ready to act on this. Ms. Reed moved to approve the contract in the amount of \$20,000 to provide certain services and activities to senior citizens in community and authorize the Mayor to sign. Second by Mr. Bates. Vote: Ayes. Motion carried.

From the audience Deb O'Reilly asked for an update on the status of the environmental report on the land for the water park. The Council has received no information, verbal or written, said Mr. Hardin, since the last meeting with the Parks Board when questions were posed. Mr. Deer indicated that the emphasis has changed to purchasing land rather than land specifically for a water park. Ms. Koons-Davis suggested that the Parks Department should have a copy of the report on soil samples and told Ms. O'Reilly that the Parks Board meets the second Wednesday of every month at 7:00 p.m. at the Community Center. Mr. Deer and Mr. Hardin agreed that they heard reports that the land was suitable for commercial (park) development but only in part suitable for residential development.

With no further business, the meeting adjourned at 8:30 p.m.